> ". . . the functions, powers and duties of the Board of Managers of the New Jersey Agricultural Experiment Station are transferred to the Trustees of Rutgers College in New Jersey which shall appoint a board of managers to act as its agent in managing and directing the New Jersey Agricultural Experiment Station."

The Act then goes on to specify how the board of managers shall be appointed.

Until Chapter 61 of the Laws of 1956 became effective, the legal name for the Rutgers corporate entity was "The Trustees of Rutgers College in New Jersey". Under the new legislation, the official name of the Rutgers corporate entity was changed to "Rutgers, the State University". Accordingly, N.J.S.A. 18:22-15.5 must now be interpreted by reading "Rutgers, the State University" wherever the words "The Trustees of Rutgers College in New Jersey" appear.

Until the 1956 legislation, "The Trustees of Rutgers College in New Jersey" was managed by a single governing body known as the Board of Trustees. The Board of Trustees, possessing the principal management functions of the university, exercised the appointment powers delegated by statute to the university. Chapter 61 of the Laws of 1956, however, vests the principal management functions of the university, including the power to appoint, in the newly created Board of Governors. See L. 1956, c. 61, sec. 18 (N.J.S.A. 18:22-15.42); *Trustees of Rutgers College* v. *Richman*, 41 N.J. Super 259, 287, 288 (Ch. Div. 1956).

You are accordingly advised that the Board of Governors of Rutgers, the State University, is the proper appointing agent to designate members to the Board of Managers of the New Jersey Agricultural Experiment Station under Chapter 49 of the Laws of 1945 (N.J.S.A. 18:22-15.5).

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID LANDAU
Legal Assistant

DL:mc

APRIL 17, 1957

HONORABLE I. GRANT SCOTT
Clerk of the Superior Court
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-10

DEAR MR. SCOTT:

This office is in receipt of your letter of March 7, 1957 wherein you request our opinion concerning the interpretation to be given R.S. 43:21-15(b). Specifically, you advise that at all times since the effective date of the Judicial Article of the 1947 Constitution on September 15, 1948 you have construed the cited statute to preclude the taxation of costs against employees who fail to prevail on appeal to the Superior Court, Appellate Division in actions arising under the Unemployment Compensation

Law, R.S. 43:21-1 et seq. We further understand that this practice has been followed during the same period by the Clerk of the Supreme Court. For the reasons hereinafter stated, it is our opinion that you have correctly interpreted R.S. 43:21-15(b) and that this section prohibits the taxing of such costs.

R.S. 43:21-15(b) reads as follows:

> "(b) Limitation of fees. No individual claiming benefits shall be charged *fees of any kind* in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the board of review or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or imprisoned for not more than six months, or both." (Emphasis supplied)

R.R. 1:9-2, made applicable to the Superior Court, Appellate Division by R.R. 2:9-2, provides for the taxation by the Clerk of the Court of "such costs as are recoverable by law" in favor of the prevailing party.

N.J.S. 22A:2-1 and 2 deal, respectively, with the *fees* payable to the Clerk of the Supreme Court and the *costs* to be awarded therein. These sections are made applicable to the Superior Court, Appellate Division by N.J.S. 22A:2-5. It is clear that when used as words of art the terms "fees" and "costs" have different and distinct meanings. It has frequently been said that "fees" represent compensation to an officer for services rendered in the progress of a cause, while "costs" are allowances to a party for expenses incurred in prosecuting or defending a suit. *McLain* v. *Continental Supply Co.,* 66 Okl. 225, 168 P. 815 (Sup. Ct. 1917); *Tillman* v. *Wood,* 58 Ala. 578 (Sup. Ct. 1877); *Bohart* v. *Anderson,* 24 Okl. 82, 103 P. 742 (Sup. Ct. 1909); and *State* v. *Ayer,* 194 Wash. 165, 77 P. 2d 610 (Sup. Ct. 1938). The aforesaid authorities, while recognizing the distinction between the words in question, all agree that they are commonly used interchangeably and they so construe and apply these terms.

The word "fees" in the present context would appear to apply to attorneys' fees as well as to filing fees and other fixed charges paid by litigants. On the other hand, the word "costs" as used in N.J.S. 22A:2-2 and R.R. 1:9-2 embrances those charges, including filing fees, to which the prevailing party is generally entitled. As to the meaning of the term "fees *of any kind*" in R.S. 43:21-15(b), it is our opinion that the *Italic* words evince a legislative intention to equate "fees" with the word "costs" as the latter is used in N.J.S. 22A:2-2 and R.R. 1:9-2. This view is strengthened by the fact that the "fees" dealt with in R.S. 43:21-15(b) are not, as they could have been, limited either to filing fees or attorney's fees. Moreover, while it may be urged that there is no prohibition in the statute against the payment of such fees to an employer who prevails on appeal, before an employer or any prevailing party can collect court costs the latter must be taxed, or charged, by the Clerk of the Court. It is this taxing or charging which we believe is prohibited by R.S. 43:21-15(b).

It may also be contended that the instant question is a procedural one to be governed solely by the rules of Court. It is not necessary, however, to characterize

it as either substantive or procedural since R.R. 1:9-2 specifically refers to "such costs as are recoverable by law." Cf. 4:55-6(a), in which reference is made to the taxation of costs in favor of the prevailing party "except when express provision therefor is made either in a statute or in these rules".

The aforesaid interpretation of R.S. 43:21-15(b) is further supported by the fact that the Unemployment Compensation Law is remedial and should be liberally construed. See R.S. 43:21-2, *Bergen Point Iron Works* v. *Board of Review,* 137 N.J.L. 685 (E. & A. 1948) and *Ford Motor Co.* v. *New Jersey Department of Labor and Industry,* 7 N.J. Super. 30 (App. Div. 1950), aff'd 5 N.J. 494 (1950). To give the term "fees of any kind" as used in R.S. 43:21-15(b) a narrower meaning than the word "costs" as used in N.J.S. 22A:2-2 and R.R. 1:9-2 would, we believe, run counter to legislative intent.

Finally, the fact that both you and the Clerk of the Supreme Court have for many years construed the word "fees" as synonymous with "costs" is illuminative of the proper meaning to be given that term. See *Lane* v. *Holderman,* 23 N.J. 304, 322 (1957), and the cases therein cited; *Sutherland, Statutory Construction* (3rd Edit.), Section 5107.

In summary, it is our opinion and you are advised that R.S. 43:21-15(b) precludes you from charging costs against an employee who fails to prevail on an appeal to the Superior Court, Appellate Division.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHRISTIAN BOLLERMANN
Deputy Attorney General

CB:MG

APRIL 17, 1957

HONORABLE JOSEPH E. MCLEAN, *Commissioner*
Department of Conservation and Economic Development
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-11

DEAR COMMISSIONER MCLEAN:

You have requested our opinion whether the State can lease mineral rights for the mining or extraction of certain minerals from the sands of the Colliers Mills Public Shooting and Fishing Grounds. This tract is administered by the Division of Fish and Game in your department (*R.S.* 13:1B-23, 27; *R.S.* 23:3-11), and it is our understanding that the ore in question can be extracted from the surface without permanently damaging the property for a fish and game preserve.

The acquisition of the Colliers Mills tract was pursuant to the authority contained in *R.S.* 13:1-18 and *R.S.* 23:3-11. The tract as it now stands consists of certain property known as the Emson Estate which was purchased by the State from the First National Bank of Hightstown, New Jersey; lands acquired by virtue of